Iowa Department of Natural Resources
Environmental Protection Commission

ITEM [ ] **DECISION**

TOPIC **Notice of Intended Action:** Major New Source Review Rules: Chapters 20, 22, 31 and 33

The department is requesting permission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 20 "Scope of Title-Definitions-Forms-Rules of Practice," Chapter 22 "Controlling Pollution," Chapter 31 "Nonattainment Areas," and to adopt a new Chapter 33 "Special Regulations and Construction Permit Requirements for Major Stationary Sources – Prevention of Significant Deterioration (PSD) and Nonattainment Area Rules" of the 567 Iowa Administrative Code.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) promulgated revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR Part 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR Part 51.166. Additional background regarding this rule promulgation is contained in the attached rule preamble. The department has until January 6, 2006, to adopt these rules and submit a request to EPA to incorporate the adopted rules into the Iowa State Implementation Plan (SIP).

On March 30, 2004, the department convened a technical workgroup (facilitated by the Department of Economic Development) to review the elements of the major NSR program affected by this rulemaking. The workgroup was tasked with making recommendations to the department regarding the adoption of the federal rulemaking into the Iowa Administrative Code. The workgroup was composed of affected stakeholders who have experience and knowledge of the major NSR program and was supported by permitting staff from the department. The recommendations of the workgroup and the department's actions regarding the recommendations are summarized in the attached "NSR Reform Workgroup Recommendation Summary" document.

The consensus reached by the workgroup was that the text of EPA's major NSR rules should be adopted directly into the Iowa Administrative Code, rather than adopted by reference. Adoption of the major NSR rules directly into the Iowa Administrative Code allows the user to access the rules directly in the Iowa Administrative Code instead of referring to the applicable Code of Federal Regulations. This approach also allows the department to reorganize and consolidate portions of the major NSR rules to make them easier for the regulated public to understand and implement. An additional benefit of this approach is that the major NSR rules become the department's rules, thereby giving the department more flexibility in the implementation of rule provisions that could be subject to interpretation. The ability of the department to have additional

flexibility to address interpretative issues on a case-specific basis was a feature desired by many of the workgroup members.

The workgroup members also recommended nine changes to the federal rules that should be considered during the adoption process. After consideration of the workgroup's recommendations, the department concurred with five of the nine recommendations. As noted in the attached "NSR Reform Workgroup Recommendation Summary" document, only one of these recommendations resulted in a change to the text of the EPA's major NSR rules. The workgroup's recommendations and the department's actions regarding each recommendation are summarized in Table 1 of this agenda item.

This NOIA was presented to the Commission last month in an information item. Only minor, administrative changes to dates and federal rule citations were made after the NOIA was presented for information. The proposed rulemaking consists of the following:

- Amend rule 20.1 to refer to new chapter 33 for special requirements for major stationary sources.
- Amend rule 22.4 to refer to new Chapter 33, and rescind subrules 22.4(1), 22.4(2), 22.4(3), and 22.4(4).
- Amend rule 22.5 to refer to new Chapter 33 and rescind subrules 22.5(1), 22.5(2), 22.5(3), 22.5(4), 22.5(5), 22.5(6) 22.5(7), 22.5(8), 22.5(9) and 22.5(10).
- Rescind rule 22.6 (these rules will now be located in new Chapter 33.
- Amend rule 31.1 to refer to new Chapter 33.
- Adopt a new Chapter 33 "Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) and Nonattainment Area Rules." The new chapter will contain state rules to meet federal requirements for federally approved state air permitting programs under 40 CFR 51.165 [Permit requirements (for major sources located in nonattainment areas)] and 40 CFR 51.166 [Prevention of significant deterioration (PSD) of air quality (for major sources located in areas designated attainment or unclassified)]. Because EPA recently made significant and voluminous changes to 40 CFR 51.165 and 51.166, the department determined that a new chapter would best accommodate these changes. The new chapter will replace the existing requirements contained in rules 22.4, 22.5 and 22.6.

  The proposed adoption of the new Chapter 33 will include the following rules:

  - **33.1(455B) Purpose**. This rule will explain the chapter's purpose in implementing the special construction permitting requirements for new major stationary sources or modifications at existing major stationary sources. For areas of the state designated attainment or unclassified, these facilities are subject to prevention of significant deterioration (PSD) requirements. Facilities that are located in, or will locate in, an area of the state classified as nonattainment are subject to specific permitting requirements for those areas. Many of the requirements, including the definitions, are identical for the PSD and nonattainment area programs. However, there are also definitions and requirements that are unique to each program.

- **33.2(455B) Definitions**. The definitions included in this rule are applicable to both the PSD and nonattainment programs, except as otherwise specified. Some definitions that are specific to each program are contained in rules 33.3 and 33.4. Additionally, definitions specific to Plantwide Applicability Limitations (PALs) are contained in subrule 33.9.
- **33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD)**. This rule will include definitions unique to the PSD program, applicability of the PSD program, and other requirements specific to the PSD program. These rules will replace the rules currently contained under 567 IAC 22.4.
- **33.4(455B) Special construction permit requirements in nonattainment areas**. This rule will include the definitions unique to the nonattainment area program, applicability of the program, and other requirements specific to the nonattainment area program. These rules will replace the rules currently contained under 567 IAC 22.5.
- **33.5(455B) Nonattainment area designations**. This rule explains how to obtain a list of Iowa's nonattainment area designations. The text of this rule is taken from the text currently contained in 567 IAC 22.6, and replaces that rule.
- **33.6(455B) Clean Unit Test for emission units that are subject to BACT or LAER**. The owner or operator of a major stationary source may choose the option of using the Clean Unit Test, provided that they follow the requirements in this rule. The Clean Unit test may be used to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. Except as specified in this rule, the requirements for this Clean Unit Test are applicable to both the PSD and nonattainment area programs.
- **33.7(455B) Clean Unit provisions for emission units that achieve an emission limitation comparable to BACT or LAER**. If an emission unit at a major stationary source does not qualify as a Clean Unit under rule 33.5, it may apply the conditions in this rule to determine if the emission unit is achieving a level of emission control comparable to BACT or LAER. Except as otherwise specified in the rule, the requirements are applicable to both PSD and nonattainment area programs.
- **33.8(455B) Pollution control project (PCP) exclusion procedural requirements.** This rule provides major stationary sources that undertake a pollution control project (PCP) at an existing emission unit to be excluded from PSD or nonattainment area requirements, provided the conditions in this rule are met. Except as otherwise specified, the PCP exclusion procedures are the same for PSD and nonattainment area requirements.
- **33.9(455B) Plantwide applicability limitations (PALs)**. This rule provides any existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. Except as otherwise specified, the PAL requirements apply to both PSD and nonattainment area programs.

A fiscal impact statement is attached.

Jim McGraw
Supervisor, Program Development Section

Table 1. Summary of Workgroup Recommendations and Department Actions

Issue	Workgroup recommendation	Department Action
Define extent quantifiable as related to fugitive emissions.	Make no changes to EPA rules on this topic.	Concur.
Define adequate/inadequate information for determining annual emissions.	Make no changes to EPA rules on this topic.	Concur.
Startup, Shutdown and Malfunction (SSM) as related to baseline actual and projected actual emissions.	Wording in the rulemaking should indicate "unless there is evidence to the contrary, startup, shutdown, and malfunction emissions before and after a project shall be assumed to be equal."	Identified several instances where the SSMs may not be equal before or after a project for either baseline actual emissions or projected actual emissions. Recommendation not implemented.
Issue of including or excluding partial month records based on the day the emissions unit resumes regular operation.	Include the following: "The 12 month period for calculating post change actual emissions begins on the first day of the month following the date when the emissions unit resumes regular operation."	Included in 33.2(2)"a" as "…beginning on the first day of the month following the date when the unit commences or resumes…
Consideration of defining the concepts of "Debottlenecking," "Increased Utilization, and "Related to the Project" for Actual to Projected Actual tests.	Include definition of debottlenecking in the rules.	Recommendation not implemented due to concerns regarding PSD rule circumvention and exclusion of emissions changes from environmental impact review under PSD.
Contemporaneous period for netting.	Make no changes to EPA rules on this topic.	Concur. The department will continue to follow the current practice of using a five year contemporaneous period.
Availability of records to the general public regarding the applicability test applied.	Make plant records that are required to be maintained in 33.3(18)"g" accessible to the general public only through the department.	Would create unintended administrative burden on department and is counter to intent of EPA's rules. Recommendation not implemented.
Definition of a legally enforceable emission factor.	Make no changes to EPA rules on this topic.	Concur.
Consequences to a source that exceeds its projected actual emissions.	Suggested several steps that could be taken at discretion of facility to remedy actual or anticipated exceedances of projected actual emissions.	Workgroup proposal did not include rule change. No action necessary. Exceedances of the projected actual emissions will be considered on a case-by-case basis using existing compliance and enforcement mechanisms.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20 “Scope of Title-Definitions-Forms-Rules of Practice,” Chapter 22, "Controlling Pollution," Chapter 31 “Nonattainment Areas,” and to adopt a new Chapter 33 “Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) & Nonattainment Area Rules” of the Iowa Administrative Code.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) promulgated revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR Part 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR Part 51.166. Both of these programs are mandated by parts C and D of Title I of the Clean Air Act. EPA states in the preamble to the federal rulemaking that these revisions are intended to “reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency.”

The NSR program contained in parts C and D of Title I of the Clean Air Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. The department estimates that there are approximately 300 major stationary sources in the state.

Areas that do not meet the National Ambient Air Quality Standards (NAAQS) are referred to as nonattainment areas. In these areas, the nonattainment NSR program applies to new or modified major stationary sources. In areas that meet the NAAQS (referred to as

attainment areas), the PSD program applies to new or modified major stationary sources. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Five elements of the major NSR program are affected by this rulemaking. These elements include the procedure for calculating baseline actual emissions, actual-to-projected-actual emissions calculation methodology, plant wide applicability limitations (PALS), emissions units that have been designated as Clean Units, and pollution control projects (PCPs). This rulemaking also adds a new definition of "regulated NSR pollutant" that clarifies which pollutants are regulated for the purposes of major NSR.

By federal law, the department must adopt this rulemaking and submit revisions to its major NSR permitting program to implement these minimum program elements in the Iowa State Implementation Plan (SIP) by no later than January 6, 2006. The SIP contains provisions, such as the preconstruction review program, that are intended to assure that the NAAQS are achieved and maintained in the state.

On March 30, 2004, the department convened a technical workgroup (facilitated by the Department of Economic Development) to review the elements of the major NSR program affected by this rulemaking. The workgroup was tasked with making recommendations to the department regarding the adoption of the federal rulemaking into the Iowa Administrative Code. The workgroup was composed of affected stakeholders who have experience and knowledge of the major NSR program and was supported by permitting staff from the department. The recommendations of the workgroup and the department's actions regarding the recommendations are summarized in the attached "NSR Reform Workgroup Recommendation Summary" document.

The consensus reached by the workgroup was that the text of EPA's major NSR rules should be adopted directly into the Iowa Administrative Code, rather than adopted by reference. Adoption of the major NSR rules directly into the Iowa Administrative Code allows the user to access the rules directly in the Iowa Administrative Code instead of referring to the applicable Code of Federal Regulations. This approach also allows the department to reorganize and consolidate portions of the major NSR rules to make them easier for the regulated public to understand and implement. An additional benefit of this approach is that the major NSR rules become the department's rules, thereby giving the department more flexibility in the implementation of rule provisions that could be subject to interpretation. The ability of the department to have additional flexibility to address interpretative issues on a case-by-case basis was a feature desired by many of the workgroup members.

The workgroup members also recommended nine changes to the federal rules that should be considered during the adoption process. After consideration of the workgroup's recommendations, the department concurred with five of the nine recommendations. As noted in the attached "NSR Reform Workgroup Recommendation Summary" document, only one of these recommendations resulted in a change to the text of the EPA's major NSR rules.

One technical workgroup member submitted an individual recommendation for consideration. This recommendation pertained to the exemption from some provisions of the PSD rules for nonprofit health or educational institutions. The PSD rules currently adopted by the department allow nonprofit health and educational institutions to be exempted from paragraphs "j" through "r" of 40 CFR Part 52.21 if the Governor requests that the institution be exempted from these requirements. Included in this exemption are the requirements to conduct a control technology review, a source impact analysis, pre and post construction monitoring,

analysis of the impairment to visibility, soils and vegetation as a result of the project, and an analysis of the impact on nearby protected Federal Class I areas. EPA's major NSR program rules in 40 CFR Part 51.166 allow the department to determine whether this exemption from the PSD permitting requirements for nonprofit health and education institutions should be provided for in the SIP. The department has determined that it will continue with its current practice of allowing exemptions from the PSD permitting requirements of paragraphs "j" through "r" of 40 CFR Part 51.166(i) only upon the request of the Governor. Continuing this practice will ensure that possible public health and welfare consequences of proposed changes at a nonprofit health or education institution are considered before an exemption is granted from the specified PSD permitting requirements.

The department had previously adopted special requirements for nonattainment areas in rule 22.5. Several subrules from rule 22.5 have been added to rule 33.4 (Special construction permit requirements in nonattainment areas). These subrules include additional provisions related to emissions offsets, compliance of existing sources in nonattainment areas with all applicable emission standards, alternative site analysis, additional conditions for permit approval, and public availability of information. These additional provisions were not addressed in EPA's revisions to 40 CFR 51.165. The department believes that including these additional provisions in rule 33.4 will make rule 33.4 no more or less stringent than the rules in 40 CFR 51.165, provides additional certainty, and provides a smoother transition from the existing requirements in rule 22.5 to the revised requirements in rule 33.4.

Item 1 amends chapter 20 to refer to Chapter 33 for special requirements for permitting of major stationary sources.

Items 2 and 3 amend rule 22.4 to refer to the PSD requirements in Chapter 33 and rescinds all subrules of rule 22.4. Item 2 will direct administrative code users from rule 22.4 to Chapter 33 until all references to rule 22.4 are identified and changed to Chapter 33 in a subsequent rulemaking. Once this has been accomplished, rule 22.4 will be rescinded.

Items 4 and 5 amend rule 22.5 to refer to the major stationary source nonattainment area permitting requirements in Chapter 33 and rescinds all subrules of rule 22.5. Item 4 will direct administrative code users from rule 22.5 to Chapter 33 until all references to rule 22.5 are identified and changed to Chapter 33 in a subsequent rulemaking. Once this has been accomplished, rule 22.5 will be rescinded.

Item 6 rescinds rule 22.6. This specifications and instructions for obtaining the list of Iowa's nonattainment area designations will be included in new Chapter 33.

Item 7 amends rule 31.1 to refer to Chapter 33 for special construction permit requirements in nonattainment areas.

Item 8 adopts a new Chapter 33. This chapter contains the PSD and nonattainment area special regulations and construction permitting requirements for major stationary sources.

Any person may make written suggestions or comments on the proposed amendments on or before March 25, 2005. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa, 50322, fax (515) 242-5094, or by electronic mail to christine.paulson@dnr.state.ia.us.

An informational meeting will be held from 10:00 AM to 12:00 PM. on Thursday, February 17, 2005, in the conference rooms at the department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the informational meeting, department staff will be available to answer questions on any of the proposed rule revisions.

A public hearing will be held on Friday, March 18, 2005, at 10:00 AM in the conference rooms at the department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. A second public hearing will be held on Wednesday, March 23, 2005, at 1:00 PM in the Gritter Room of Iowa Hall at Kirkwood Community College in Cedar Rapids, Iowa. Comments may be submitted orally or in writing at either of these public hearings. All comments must be received no later than March 25, 2005.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Christine Paulson at (515) 242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend rule 20.1 as follows:

20.1(455B,17A) Scope of Title. The department has jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards or air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. The construction and operation of any new or existing stationary source which emits or may emit any air pollutant requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable to this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards

and procedures for permitting of emission sources ~~and special requirements for nonattainment areas~~. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets for the qualifications for an observer for reading visible emissions. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources, which includes the Prevention of Significant Deterioration (PSD) and nonattainment area rules.

ITEM 2. Amend rule 22.4 as follows:

22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified ~~(PSD)~~. ~~Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 CFR Subsection 52.21 as amended through March 12, 1996.~~ The rules for prevention of significant deterioration (PSD) are contained in 567 IAC Chapter 33, rules 33.1(455B), 33.2(455B), 33.3(455B), 33.6(455B), 33.7(455B), 33.8(455B) and 33.9(455B).

ITEM 3. Rescind subrules 22.4(1), 22.4(2), 22.4(3), and 22.4(4).

ITEM 4. Amend rule 22.5 as follows:

22.5(455B) Special requirements for nonattainment areas. The rules for major stationary sources located in areas designated as nonattainment are contained in 567 IAC Chapter 33, rules 33.1(455B), 33.2(455), 33.4(455B), 33.5(455B), 33.6(455B), 33.7(455B), 33.8(455B) and 33.9(455B).

ITEM 5. Rescind subrules 22.5(1), 22.5(2), 22.5(3), 22.5(4), 22.5(5), 22.5(6) 22.5(7), 22.5(8), 22.5(9) and 22.5(10).

ITEM 6. Rescind rule 22.6.

ITEM 7. Amend rule 31.1 as follows:

31.1(455B) Permit requirements relating to nonattainment areas. Special construction permit requirements in nonattainment areas are contained in rules 567-~~22.5(455B) and 22.6(455B)~~ 33.1(455B), 33.2(455B), 33.4(455B), 33.5(455B), 33.6(455B), 33.7(455B), 33.8(455B) and 33.9(455B).

ITEM 8. Adopt a new Chapter 33, as follows:

CHAPTER 33

Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) & Nonattainment Area Rules

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in parts C and D of Title I of the federal Clean Air Act (as amended on November 15, 1990), and as promulgated under 40 CFR Part 51.165 and 40 CFR Part 51.166 (as amended through July 1, 2004). This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under parts C and D of the Clean Air Act (as amended on November 15, 1990). In areas that do not meet the

National Ambient Air Quality Standards (NAAQS), the nonattainment NSR program applies. In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Many of the requirements, including the definitions, are identical or similar for the PSD and nonattainment NSR programs. However, there are also definitions and requirements that are unique to each program. Rule 33.2 contains the definitions that are applicable to both PSD and nonattainment NSR programs. Rule 33.3 sets forth the definitions, standards and permitting requirements that are specific to the PSD program. Rule 33.4 contains the definitions, standards and permitting requirements that are specific to the nonattainment NSR program. Rule 33.5 specifies how to obtain a list of Iowa's nonattainment area designations. Rules 33.6 and 33.7 contain the conditions for classifying an emission unit as a Clean Unit for both PSD and nonattainment NSR programs. Rule 33.8 sets forth the requirements for using the Pollution Control Project (PCP) exclusion for both PSD and nonattainment NSR programs. Rule 33.9 includes the conditions under which a source subject to either PSD or the nonattainment NSR program may obtain a Plantwide Applicability Limit (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in Chapter 22, including requirements for Title V operating permits.

567—33.2(455B) Definitions. Unless otherwise noted, the definitions in this rule shall apply to major New Source Review (NSR) rules and programs for both PSD and nonattainment areas. Additional definitions that are specific to these and other programs in this chapter are contained under the applicable rules. For the purposes of this chapter, the following terms shall have the meaning indicated in this rule.

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq. (as amended on November 15, 1990).

"Actual emissions" means"

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with "2" through "4", except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567 IAC 33.9(455B). Instead, the requirements specified under the definitions for "projected actual emissions" and "baseline actual emissions" of this rule shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in subrules 23.1(2) through 23.1(5) (new source performance standards, emission standards for hazardous air pollutants, and federal emission guidelines);

2. The applicable State Implementation Plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition.

"Baseline area" means

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

2. Area redesignations under section 107(d)(1) (D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which

establishes a minor source baseline date or is subject to regulations specified in rule 567 IAC 33.3 (PSD requirements).

3. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permit authority rescinds the corresponding minor source baseline date in accordance with the definition specified in this rule.

"Baseline concentration" means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

The actual emissions, as defined in this rule, representative of sources in existence on the applicable minor source baseline date, except as provided in "2" below;

The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

Actual emissions, as defined in this rule, from any major stationary source on which construction commenced after the major source baseline date; and

Actual emissions increases and decreases, as defined in this rule, at any stationary source occurring after the minor source baseline date.

"Baseline date" shall include both "major source baseline date" and "minor source baseline date," as follows:

The "major source baseline date" means, in the case of particulate matter and sulfur dioxide, January 6, 1975, and in the case of nitrogen dioxide, February 8, 1988.

The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 (as amended through July 1, 2004) or to rules specified in 567 IAC 33.3(455B) (PSD requirements) submits a complete application under the relevant regulations. The trigger date for particulate matter and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988.

The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i) (D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 (as amended through July 1, 2004) or under regulations specified under 567 IAC 33.3(455B) (PSD requirements); and

2. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the reviewing authority may rescind any such minor source baseline date

where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each a regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under subrules 23.1(2) through 23.1(5) (federal standards for new stationary sources, federal standards for hazardous air pollutants, and federal emission guidelines). If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may

be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal

contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved by the Administrator in accordance with the requirements under rule 567-33.6(455B); or any emissions unit that has been designated by the department as a Clean Unit, based on the criteria in rule 567-33.7(455B), using a SIP-approved permitting process.

"Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"CFR" means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that "40 CFR 51" means "Title 40 Code of Federal Regulations, Part 51."

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in this rule. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in "1" above. A replacement unit, as defined in this rule, is an existing emissions unit.

"Enforceable permit condition" for the purpose for this chapter means any of the following limitations and conditions: requirements development pursuant to new source performance standards, prevention of significant deterioration standards, emission standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or part 51, subpart I (as amended through July 1, 2004), or under conditional, construction or Title V operating permit rules.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator or the department, including those requirements developed pursuant to 40 CFR parts 60, 61 and 63 (as amended through November 29, 2004), requirements within subrules 23.1(2) through 23.1(5), requirements within Iowa's SIP, any permit requirements established pursuant to 40 CFR 52.21or under regulations approved pursuant to 40 CFR part 51, subpart I (as amended through July 1, 2004), including operating permits issued under an EPA-approved program, that are incorporated into Iowa's SIP and expressly require adherence to any permit issued under such program.

"Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Low terrain" means any area other than high terrain.

"Major source baseline date" is defined under the definition of "Baseline date" in this rule.

"Minor source baseline date" is defined under the definition of "Baseline date" in this rule.

"Necessary preconstruction approvals or permits" mean those permits or approvals required under Federal air quality control law and regulations and those air quality control laws and regulations which are part of Iowa's SIP.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator and is incorporated into Iowa's SIP to implement the requirements of 40 CFR 51.165 (as amended through July 1, 2004), or a program that implements 40 CFR 51, appendix S, Sections I through VI (as amended through February 3, 1992). Any permit issued under such a program is a major NSR permit.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Pollution control project (PCP)" means any activity, set of work practices or project (including pollution prevention as defined in this rule) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in "1" through "6" of this definition are presumed to be environmentally beneficial pursuant to rule 567-33.8 (455B) "Pollution control project (PCP) exclusion procedural requirements." Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion pursuant to the requirements of rule 567-33.8(455B).

1. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

2. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

3. Flue gas recirculation, low-NO_X burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_X.

4. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the

purpose of this section, “hydrocarbon combustion flare” means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

5. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:

Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (*i.e.,* from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);

Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of “unclean” wood;

Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).

6. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

The productive capacity of the equipment is not increased as a result of the activity or project.

The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedures listed below:

Determine the ODP of the substances by consulting 40 CFR part 82, subpart A, appendices A and B.

Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.

Calculate the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP.

If the value calculated above for the replaced ODP-weighted amount is more than the value calculated above for the projected ODP-weighted amount, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

“Pollution prevention” means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O^2 or CO^2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of Significant Deterioration Program (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into Iowa's SIP. Any permit issued under such a program is a major NSR permit.

"Prevention of Significant Deterioration (PSD) permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into Iowa's SIP.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

"Repowering" means

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation

efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in "1" through "3" below are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) (as amended through December 16, 1975), or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Reviewing authority" means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State implementation plan (SIP)" means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

"Title V permit" means an operating permit under Title V of the Act.

"Volatile organic compounds (VOC)" means any compound included in the definition of volatile organic compound found at 50 CFR Section 51.100(s) (as amended through November 29, 2004).

33.2(1) "Baseline actual emissions", for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs "a" through "d".

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the

emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraph (2).

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during

the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph 33.4(3)”h”.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs (2) and (3).

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “a”, for other existing emissions units in accordance with the procedures contained in paragraph “b”, and for a new emissions unit in accordance with the procedures contained in paragraph “c”.

33.2(2)“Projected actual emissions” for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit commences or resumes operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subrule 33.2(1) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

d. In lieu of using the method set out in paragraphs “a” through “c”, may elect to use the emissions unit's potential to emit, in tons per year, as defined under rule 33.2(455B).

567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment of unclassified (PSD).

33.3(1) Definitions. Definitions included in this subrule apply to rule 33.3 (PSD program requirements) only. Additional definitions applicable to rule 33.3 are contained in rules 567-33.2 and 33.9. For purposes of rule 33.3, the following terms shall have the meaning indicated in this subrule:

a.(1) “Major Stationary Source” means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any a regulated NSR pollutant (as defined in this rule):

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;

- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

2. Notwithstanding the stationary source size specified in "1", any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant (as defined in this rule); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subparagraph, as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in subparagraph (1) or to any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

b. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a

regulated NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source. All terms used in this paragraph shall have the meanings indicated in this subrule.

(1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

1. Use of an alternative fuel or raw material by reason of any order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

2. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975.

6. Any change in ownership at a stationary source.

7. The addition, replacement, or use of a PCP, as defined in rule567-33.2(455B), at an existing emissions unit meeting the requirements of rule 567-33.8(455B). A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567-33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 33.9 shall apply.

c. (1)"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

1. The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided for in rule 567-33.2(455B) under the definitions of "Baseline actual emissions," except that subparagraphs 33.2(1)"a"(3) and 33.2(1)"b"(4) of that rule shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

1. It occurs within the contemporaneous time period, as noted in subparagraph (2);

2. The department has not relied on it in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and

3. The increase or decrease in emissions did not occur at a Clean Unit, except as provided in subrules 567-33.6(8) and 567-33.7(10) for "netting at Clean Units."

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if

it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

4. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under rule 567-33.7(455B). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (*i.e.,* must not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to rule 567-33.8(455B) or for the Clean Unit designation are creditable to the extent they meet the requirements in paragraph 33.8(6)"d" for

"generation of emission reduction credits" for the PCP and subrules 33.6(8) and 33.7(10) for "netting at Clean Units" for a Clean Unit.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Item "2" under the definition of "Actual emissions," as specified in rule 567-33.2(455B) shall not apply for determining creditable increases and decreases.

d. "Regulated NSR pollutant" means the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.,* volatile organic compounds are precursors for ozone);

(2) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(3) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(4) Any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

e.(1) “Significant” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy of particulate matter emissions. 15 tpy of PM_{10} emissions.

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2 S): 10 tpy

Total reduced sulfur (including H_2 S): 10 tpy

Reduced sulfur compounds (including H_2 S): 10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

(2) "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subparagraph (1), does not list, any emissions rate.

(3) Notwithstanding subparagraph (1), "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

f. "Significant emissions increase" means, for a regulated NSR pollutant (as defined in paragraph "d"), an increase in emissions that is significant (as defined in paragraph "e") for that pollutant.

33.3(2) Applicability. The requirements of rule 567-33.3(455B) apply to the construction of any new major stationary source, as defined in paragraph 33.3(1)"a", or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

a. The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

b. No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18)"e" of this rule apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in paragraphs "i" and "j", and consistent with the definition of major modification contained in paragraph 33.3(1)"b", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in subrule 33.3(1)"f"), and a significant net emissions increase (as defined in paragraphs 33.3(1)"c" and "e"). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs "e" through "h". The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition of "net emissions increase" in paragraph 33.3(1)"c". Regardless of any such

preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in subrule 33.2(2)) and the baseline actual emissions (as defined in subrule 33.2(1)) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.3(1)"e").

f. Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in rule 33.2) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph 33.2(1)"c") of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.3(1)"e").

g. Emission test for projects that involve Clean Units. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs "e" through "g" as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.3(1)"e"). For example, if a

project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph "e" for the existing unit and determined using the method specified in paragraph "g" for the Clean Unit.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567-33.9(455B).

j. An owner or operator undertaking a PCP (as defined in rule 567-33.2(455B)) shall comply with the requirements under rule 567-33.8(455B).

33.3(3) Ambient air increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I	
Particulate matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512

Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM_{10}, annual arithmetic mean	34
PM_{10}, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum.	700
Nitrogen dioxide: Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

33.3(4) Ambient air ceilings. No concentration of a pollutant shall exceed:

a. The concentration permitted under the national secondary ambient air quality standard, or

b. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

33.3(5)a. Restrictions on area classifications. All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(1) International parks,

(2) National wilderness areas which exceed 5,000 acres in size,

(3) National memorial parks which exceed 5,000 acres in size, and

(4) National parks which exceed 6,000 acres in size.

b. Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this rule.

c. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this rule.

d. The following areas may be redesignated only as Class I or II:

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

33.3(6) Exclusions from increment consumption.

a. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(2) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(3) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(4) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(5) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by SIP revisions approved by the Administrator as meeting the criteria specified in paragraph “d”.

b. No exclusion of such concentrations specified in subparagraphs ”a”(1) and (2) shall apply more than five years after the effective date of the order to which subparagraph (1) refers, or the plan to which subparagraph (2) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

c. [Reserved]

d. For purposes of excluding concentrations pursuant to subparagraph ”a”(5), the Administrator may approve a SIP revision that:

(1) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator.

(2) Specifies that the time period for excluding certain contributions in accordance with subparagraph (1) is not renewable;

(3) Allows no emissions increase from a stationary source which would impact a Class I area or an area where an applicable increment is known to be violated; or cause or contribute to the violation of a national ambient air quality standard;

(4) Requires limitations to be in effect the end of the time period specified in accordance with subparagraph (1), which would ensure that the emissions levels from stationary sources affected by the SIP revision would not exceed those levels occurring from such sources before the SIP revision was approved.

33.3(7) Redesignation.

a. All areas of the State (except as otherwise provided under subrule 33.3(5)) shall be designated either Class I, Class II, or Class III. Any designation other than Class II shall be subject to the redesignation procedures of this subrule. Redesignation (except as otherwise precluded by subrule 33.3(5)) may be proposed by the respective States or Indian Governing Bodies, as provided in this subrule, subject to approval by the Administrator as a revision to the applicable SIP.

b. The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(1) At least one public hearing has been held in accordance with procedures established in 40 CFR §51.102 (as amended through February 22, 2000).

(2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(4) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(5) The State has proposed the redesignation after consultation with the elected leadership of local and other sub-state general purpose governments in the area covered by the proposed redesignation.

c. Any area other than an area to which subrule 33.3(5) refers may be redesignated as Class III if:

(1) The redesignation would meet the requirements of provisions established in accordance with paragraph “b”;

(2) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation (including resolutions where appropriate) concurring in the redesignation;

(3) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(4) Any permit application for any major stationary source or major modification subject to provisions established in accordance with subrule 33.3(17) which could receive a permit only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

d. Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III provided that:

(1) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs “b” and “c”; and

(2) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

e. The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with subrule 33.3(5). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

f. If the Administrator disapproves any proposed area designation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

33.3(8) Stack heights. The degree of emission limitation required for control of any air pollutant under the plan shall not be affected in any manner by:

a. So much of a stack height, not in existence before December 31, 1970, as exceeds good engineering practice, or

b. Any other dispersion technique not implemented before then.

33.3(9) Exemptions.

a. The requirements of subrules 33.3(10) through 33.3(18) shall not apply to a particular major stationary source or major modification, if;

(1) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(2) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

Commenced construction before March 19, 1979; and

Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(3) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(4) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable SIP before March 1, 1978;

Commenced construction before March 19, 1979; and

Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(5) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable SIP before August 7, 1980;

Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable SIP; and

Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(6) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor requests that it be exempt from those requirements; or

(7) The source is a portable stationary source which has previously received a permit under this rule, and

The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

The emissions from the source would not exceed its allowable emissions; and

The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(8) The source or modification was not subject to 40 CFR 52.21 or a SIP approved PSD program, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987;

Commenced construction within 18 months after July 31, 1987, or any earlier time required under the SIP; and

Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.

(9) The source or modification was subject to 40 CFR 52.21 or a SIP approved PSD program, with respect to particulate matter, as in effect before July 31, 1987 and the owner or

operator submitted an application for a permit under this section before that date, and the department or the Administrator subsequently determines that the application as submitted was complete with respect to the particular matter requirements then in effect in the section. Instead, the requirements of subrules 33.3(10) through 33.3(18) that were in effect before July 31, 1987 shall apply to such source or modification.

b. The requirements of subrules 33.3(10) through 33.3(18) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Act.

c. The requirements of subrules 33.3(11), 33.3(13) and 33.3(15) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(1) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(2) Would be temporary.

d. The requirements of subrules 33.3(11), 33.3(13) and 33.3(15) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

e. The department may exempt a stationary source or modification from the requirements of subrule 33.3(13), with respect to monitoring for a particular pollutant if:

(1) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide—575 μg/m^3, 8-hour average;

Nitrogen dioxide—14 μg/m^3, annual average;

Particulate matter—10 μg/m^3 of PM_{10}, 24-hour average;

Sulfur dioxide—13 μg/m^3, 24-hour average;

Ozone;[1]

[1] No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

Lead—0.1 μg/m^3, 3-month average;

Fluorides—0.25 μg/m^3, 24-hour average;

Total reduced sulfur—10 μg/m^3, 1-hour average;

Hydrogen sulfide—0.2 μg/m^3, 1-hour average;

Reduced sulfur compounds—10 μg/m^3, 1-hour average; or

(2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph (1), or the pollutant is not listed in subparagraph (1).

f. The requirements for best available control technology in subrule 33.3(10) and the requirements for air quality analyses in paragraph 33.3(13)"a" shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

g.(1) The requirements for air quality monitoring in subparagraphs 33.3(13)"a"(2) through (4) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this rule on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements this other than those in subparagraphs 33.3(13)"a"(2) through (4), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(2) The requirements for air quality monitoring in subparagraphs 33.3(13)"a"(2) through (4) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an

application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in subparagraphs 33.3(13)”a”(2) through (4).

h.(1) At the discretion of the department, the requirements for air quality monitoring of PM_{10} in subparagraphs 33.3(13)”a”(1) through (4) may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under these rules on or before June 1, 1988 and the department or Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in subparagraphs 33.3(13)”a”(1) through (4).

(2) The requirements for air quality monitoring of PM_{10} in subparagraphs 33.3(13)”a”(2) and (4) and paragraph 33.3(13)”c” shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under subparagraph 33.3(13)”a”(8), except that if the department or the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph 33.3(13)”a”(3) requires shall have been gathered over a shorter period.

i. The requirements of paragraph 33.3(11)”b” shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this rule

before the provisions embodying the maximum allowable increase took effect as part of the applicable SIP and the department or the Administrator subsequently determined that the application as submitted before that date was complete.

j. The requirements in paragraph 33.3(11)"b" shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if:

(1) The owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM_{10} took effect in a SIP to which this rules applies; and

(2) The department or the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph 33.3(11)"b" shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

33.3(10) Control technology review.

a. A major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable federal emission standards and standard of performance under subrules 23.1(2) through 23.1(5).

b. A new major stationary source shall apply best available control technology (BACT) for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

c. A major modification shall apply best available control technology (BACT) for each a regulated NSR pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in

the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

d. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the least reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

33.3(11) Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction (including secondary emissions) would not cause or contribute to air pollution in violation of:

a. Any national ambient air quality standard in any air quality control region; or

b. Any applicable maximum allowable increase over the baseline concentration in any area.

33.3(12) Air quality models.

a. All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of 40 CFR Part 51, Guideline on Air Quality Models (as amended through August 12, 1996).

b. Where an air quality model specified in appendix W of 40 CFR Part 51, Guideline on Air Quality Models (as amended through August 12, 1996) is inappropriate, the model may be

modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR §51.102 (as amended through February 22, 2000).

33.3(13) Air quality analysis.

a. Preapplication analysis.

(1) Any application for a permit under regulations approved pursuant to this rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

For the source, each pollutant that it would have the potential to emit in a significant amount;

For the modification, each pollutant for which it would result in a significant net emissions increase.

(2) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(3) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data

gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(4) In general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(5) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR part 51 appendix S, section IV (as amended through February 3, 1992) may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this paragraph.

b. Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

c. Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, appendix B (amended through October 6, 1995), during the operation of monitoring stations for purposes of this subrule.

33.3(14) Source information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with this rule.

a. Such information shall include:

(1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(2) A detailed schedule for construction of the source or modification;

(3) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

b. Upon request of the department, the owner or operator shall also provide the following information:

(1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(2) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

33.3(15) Additional impact analyses.

a. The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

b. The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

33.3(16) Sources impacting Federal Class I areas—additional requirements.

a. Notice to EPA. The department shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the Administrator of every action related to the consideration of such permit.

b. Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values.

c. Denial—impact on air quality related values. A Federal Land Manager of any such lands may present to the State, after the department's preliminary determination required under procedures developed in accordance with subrule 33.3(18), a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-

related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the department shall not issue the permit.

d. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source would have no adverse impact on the air quality related values of such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and so certifies to the State, the department may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

e. Sulfur dioxide variance by Governor with Federal Land Manager's concurrence.

(1) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to paragraph “d” may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility);

(2) The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase; and

(3) If such variance is granted, the department may issue a permit to such source or modification in accordance with provisions developed pursuant to paragraph “g” provided that the applicable requirements of the plan are otherwise met.

f. Variance by the Governor with the President's concurrence.

(1) The recommendations of the Governor and the Federal Land Manager shall be transferred to the President in any case where the Governor recommends a variance in which the Federal Land Manager does not concur;

(2) The President may approve the Governor's recommendation if he finds that such variance is in the national interest; and

(3) If such a variance is approved, the department may issue a permit in accordance with provisions developed pursuant to the requirements of paragraph “g” provided that the applicable requirements of the SIP are otherwise met.

g. Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued under procedures developed pursuant to paragraphs “e” or “f”, the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase			
[Micrograms per cubic meter]			
Period of exposure			Terrain areas
			Low High
24-hr maximum			36 62

3-hr maximum	130 221

33.3(17) Public participation.

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment.

(4) Send a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction

would occur as follows: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source.

33.3(18) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c.-e. [Reserved]

f. The following specific provisions shall apply to projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs 33.2(2)”b”(1) through (3) for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

A description of the project;

Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph 33.2(2)”b”(3),

and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. Nothing in this subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions (as documented and maintained pursuant to subparagraph (1)) by a significant amount (as defined in

paragraph 33.3(1)"e" for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (1). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

The name, address and telephone number of the major stationary source;

The annual emissions as calculated pursuant to subparagraph (3); and

Any other information that the owner or operator wishes to include in the report (*e.g.,* an explanation as to why the emissions differ from the preconstruction projection).

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph "f" available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 50 CFR §70.4(b)(3)(viii) (as amended through May 15, 2001).

33.3(19) Innovative control technology.

a. An owner or operator of a proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

b. The department may, with the consent of the Governor(s) of other affected State(s), determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 33.3(10)”b”, by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

(3) The source or modification would meet the requirements equivalent to those in subrules 33.3(10) and 33.3(11), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(4) The source or modification would not before the date specified by the department:

Cause or contribute to any violation of an applicable national ambient air quality standard; or

Impact any area where an applicable increment is known to be violated;

(5) All other applicable requirements including those for public participation have been met.

(6) The provisions of subrule 33.3(16) relating to Class I areas have been satisfied with respect to all periods during the life of the source or modification.

c. The department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

d. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with paragraph "c", the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

33.3(20) Conditions for permit issuance. Except as explained below, a permit may not be issued to any new major stationary source or major modification, as defined in subrule 33.3(1), that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 Hrs.	8 Hrs.	3 Hrs.	1 Hr.
Pollutant					
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$	———	25 $\mu g/m^3$	———
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	———	———	———
NO_2	1.0 $\mu g/m^3$	———	———	———	———

CO	———	———	500 μg/m^3	———	2000 μ/m^3

A permit may be granted to a major source or major modification as identified above if it reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

567—33.4(455B) Special construction permit requirements in nonattainment areas.

33.4(1) Definitions. Definitions included in this subrule apply to rule 33.4 (Nonattainment area permitting requirements) only. Additional definitions applicable to rule 33.4 are contained in rules 567-33.2(455B) and 567-33.9(455B). For purposes of rule 33.4, the following terms shall have the meaning indicated in this subrule:

a.(1) "Major Stationary Source" means:

Any stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any a regulated NSR pollutant (as defined in this rule), or

Any physical change that would occur at a stationary source not otherwise qualifying under "1", as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;

- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.
- Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

b. “Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a

regulated NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source. All terms used in this paragraph shall have the meanings indicated in this subrule.

(1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

1. Use of an alternative fuel or raw material by reason of any order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

2. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any enforceable permit condition, or that the source is approved to use under any enforceable permit condition;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition.

6. Any change in ownership at a stationary source.

7. The addition, replacement, or use of a PCP, as defined in subrule 567-33.2(455B), at an existing emissions unit meeting the requirements of rule 567-33.8(455B). A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(3) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567-33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 33.9 shall apply.

c.(1)"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

1. The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.4(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided for in rule 567-33.2(455B) under the definitions of "Baseline actual emissions," except that subparagraphs 33.2(1)"a"(3) and 33.2(1)"b"(4) of that rule shall not apply..

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

1. It occurs within the contemporaneous time period, as noted in subparagraph(2); and

2. The department has not relied on it in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and

3. The increase or decrease in emissions did not occur at a Clean Unit, except as provided in subrules 567-33.6(8)(455B) and 567-33.7(10)(455B) for "netting at Clean Units."

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable permit condition at and after the time that actual construction on the particular change begins;

3. The department has not relied on it any issuing any permit under regulations approved under rules 567-33.3(455B) or 33.4(455B), or the department has not relied on it in demonstrating attainment or reasonable further progress;

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

5. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under rule 567-33.7(455B). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (*i.e.,* must not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to rule 567-33.8(455B) or for the Clean Unit designation are creditable to the extent they meet the requirements in paragraph 33.8(6)"d" for "generation of emission reduction credits" for the PCP and subrules 567-33.6(8) and 567-33.7(10) for "netting at Clean Units" for a Clean Unit.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Item "2" under the definition of "Actual emissions," in rule 567-33.2(455B) shall not apply for determining creditable increases and decreases.

d. "Regulated NSR pollutant," for purposes of this rule, means the following:

(1) Nitrogen oxides or any volatile organic compound;

(2) Any pollutant for which a national ambient air quality standard has been promulgated; or

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subparagraphs (1) or (2), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

e.(1) “Significant” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

f. “Significant emissions increase” means, for a regulated NSR pollutant (as defined in paragraph “d”), an increase in emissions that is significant (as defined in paragraph “e”) for that pollutant.

33.4(2) Applicability. The requirements of rule 567-33.4(455B) apply to the construction of any new major stationary source or major modification that is major for the pollutant for

which the area is designated nonattainment under sections 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

a. Except as otherwise provided in paragraphs “g” and “h”, and consistent with the definition of major modification contained in paragraph 33.4(1)”b”, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph 33.4(1)”f”), and a significant net emissions increase (as defined in paragraphs 33.4(1)”c” and “e”). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

b. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs “c” through “f”. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition of “net emissions increase” in paragraph 33.4(1)”c”. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

c. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in subrule 33.2(2)) and the baseline actual emissions (as defined in subrule 33.2(1)) for each existing

emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.4(1)”e”).

d. Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in rule 567-33.2(455B)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph 33.2(1)”c”) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.4(1)”e”).

e. Emission test for projects that involve Clean Units. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

f. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs “c” through “e” as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph 33.4(1)”e”). For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph “c” for the existing unit and determined using the method specified in paragraph “e” for the Clean Unit.

g. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567-33.9(455B).

h. An owner or operator undertaking a PCP (as defined in rule 567-33.2(455B)) shall comply with the requirements under rule 567-33.8(455B).

33.4(3) Emissions Offsets.

a. For sources and modifications subject to any preconstruction review program according to rule 567-33.4(455B), the baseline for determining credit for emissions reductions is the emissions limit under the SIP in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where;

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. If a major source or major modification is proposed to be constructed in an area designated nonattainment for a regulated NSR pollutant (as defined under subrule 33.4(1)), the emission offsets must be achieved prior to startup of the major source or major modification.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for a regulated NSR pollutant (as defined under subrule 33.4(1)), but the modeled (EPA-approved guideline model) worst case ground level pollutant concentration due to the major source or major modification in an area designated nonattainment for that pollutant is greater than or equal to the concentrations listed in the table under subrule

33.3(20), then the emission offsets must be achieved prior to startup of the major source or major modification.

c. Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

d. For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department may require a demonstration that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

e. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan.

In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or

attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978.

For purposes of this paragraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions described above.

f. If the emissions from a major stationary source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this, provided that proper documentation (such as stack test results) showing the effect on emissions due to de-rating is submitted to the department. The permit for an existing source must be amended to limit the operating capacity before offsets will be allowed.

g. If the emissions from the major stationary source or major modification are proposed to be offset by reduction of emissions for a source not owned or operated by the owner or operator of the major stationary source or major modification, then credit may be allowed for such reductions, provided that the external source's permit is amended to require reduced emissions or a consent order is entered into by the department and the existing source. Consent

orders for external offsets shall be incorporated into the SIP and be approved by EPA before offset credit may be granted.

h. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rule, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application to the department. Any such reductions which occurred prior to January 1, 1978 shall not be accepted by the department for offsets.

i. If more effective control equipment for a source already in compliance with the SIP allowable emission level is proposed to offset the emissions of a major stationary source or major modification in or affecting a nonattainment area, then the difference in emissions between the actual level on January 1, 1978 and the new level may be credited for offsets. This does not allow credit to be granted for any reductions in actual emissions required by the SIP prior to January 1, 1978.

j. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Office of Air Quality Planning and Standards, (MD–15) Research Triangle Park, NC 27711.))

k. The department's procedures relating to the permissible location of offsetting emissions shall follow those set out in 40 CFR part 51, appendix S, section IV.D (as amended through February 3, 1992).

l. Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to rules 567-33.3(455B) or 33.4(455B), or the department has not relied on it in demonstrating attainment or reasonable further progress.

m. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.

n. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in subrules 567-33.6(8) and 33.7(10). Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in paragraph 33.8(6)”d”.

o. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification (as defined rule 567-33.2(455B) and the actual emissions before the modification (as defined in rule 567-33.2(455B)) for each emissions unit.

p. The department’s procedures relating to banking of emission offset credit shall follow those set out in 40 CFR part 51, appendix S, section IV.D.5 (as amended through February 3, 1992).

q. All emission reductions claimed as offset credit shall be federally enforceable.

33.4(4) Control Technology Review.

a. Lowest achievable emission rate. A new or modified major stationary source in a nonattainment area shall comply with the lowest achievable emission rate (LAER), as defined in rule 567-33.2(455B).

b. For phased construction projects, the determination of LAER shall be reviewed and modified as appropriate at the latest reasonable time frame that occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emissions standard under 567 Chapter 23, subrules 23.1(2), 23.1(3), 23.1(4) and 23.1(5).

33.4(5) Compliance of existing sources. If a new major stationary source or major modification is subject to rule 567-33.4(455B), then all major stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

33.4(6) Alternate site analysis. The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental

and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

33.4(7) Additional conditions for permit approval.

a. For sources subject to the air pollution control requirements under subrule 33.4(4), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with, and deviations from, applicable requirements.

b. The department shall not issue the permit if the Administrator has determined that the applicable SIP is not being adequately implemented for the nonattainment area in which the proposed major stationary source or major modification is being constructed.

33.4(8) Public availability of information. No permit shall be issued until notice an opportunity for comment are made available in accordance with the procedures set forth in 40 CFR 51.161 (as amended through November 7, 1986).

33.4(9) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations

approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

33.4(10) Additional requirements for major stationary sources. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 33.2(2)"a" through 33.2(2)"c" for calculating projected actual emissions.

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 33.2(2)"c", and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph "a" to the department. Nothing in this paragraph shall be construed to require

the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subparagraph “a”(2) of this rule; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under paragraph “c” setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in paragraph “a”, exceed the baseline actual emissions (as documented and maintained pursuant to subparagraph “a”(3) of this rule), by a significant amount (as defined in paragraph 33.4(1)”e”) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph “a”. Such report shall be submitted to the department within 60 days after the end of such year.

The report shall contain the following:

(1) The name, address and telephone number of the major stationary source;

(2) The annual emissions as calculated pursuant to paragraph "c"; and

(3) Any other information that the owner or operator wishes to include in the report (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection).

f. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR §70.4(b)(3)(viii) (as amended through May 15, 2001).

33.5(455B) Nonattainment area designations. Section 107(d) of the Act, 41 U.S.C. §7457(d), requires each state to submit to the administrator of the federal Environmental Protection Agency a list of areas that exceed the ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through April 30, 2004. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"* (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

*Filed with Administrative Rules Coordinator, also available from the department.

567—33.6(455B) Clean Unit Test for emission units that are subject to BACT or LAER. The owner or operator of a major stationary source may choose the option of using the Clean Unit Test, provided that the requirements in this rule are followed. The Clean Unit test may be used to determine whether emissions increases at a Clean Unit are part of a project that is a major modification.

33.6(1) Applicability. The provisions of rule 567-33.6(455B) apply to any emissions unit for which the department has issued a major NSR permit within the last ten years. Except as specified, the requirements in rule 33.6 for the Clean Unit Test are applicable to both the PSD and nonattainment area programs. For purposes of rule 567-33.6, the term "BACT/LAER" shall mean "BACT or LAER" for purposes of PSD permitting and standards, and shall mean "LAER" for purposes of nonattainment area permitting and standards.

33.6(2) General provisions for Clean Units.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with paragraph "d") and before the expiration date (as determined in accordance with paragraph "e") will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT/LAER and the project would not alter any physical or operational characteristics that formed the basis for the BACT/LEAR determination as specified in paragraph "f", subparagraph (4), the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT/LEAR or the project would alter any physical or operational characteristics that formed the basis for the BACT/LAER determination as specified in paragraph "f," subparagraph (4), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to subparagraph 33.6(3)"c"). If the owner or

operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the following applicability requirements as if the emissions unit is not a Clean Unit:

1. Paragraphs 33.3(2)”c” through “f” and 33.3(2)”h” for PSD projects; or

2. Paragraphs 33.4(2)”a” through “d” and 33.4(2)”f” for nonattainment area projects.

e. Certain Emissions Units with PSD permits (for nonattainment area projects only). For emissions units that meet the requirements of subparagraphs (1) and (2), the BACT level of emissions reductions and/or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for Clean Units under subrules 33.6(3) through 33.6(8). For these emissions units, all requirements for the LAER determination under paragraphs “b” and “c” shall also apply to the BACT permit terms and conditions. In addition, the requirements of subparagraph 33.6(7)”a”(2) do not apply to emissions units that qualify for Clean Unit status under this paragraph.

(1) The emissions unit must have received a PSD permit within the last 10 years and such permit must require the emissions unit to comply with BACT.

(2) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant(s) after issuance of the PSD permit and before the effective date of the Clean Unit Test provisions in the area.

33.6(3) Qualifying or re-qualifying to use the Clean Unit Applicability Test. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in paragraphs “a” and “b”. After the original Clean Unit designation expires in accordance with subrule 33.6(5) of this section or is lost pursuant to paragraph 33.6(2)”c”, such emissions unit may re-qualify as a Clean Unit under either paragraph “c”, or under the Clean Unit provisions in rule 567-33.7(455B) “Clean Unit provisions for emission units that achieve an emission limitation comparable to BACT/LAER.” To re-qualify as a Clean Unit under paragraph “c”, the emissions unit must:

For PSD-subject emission units - Obtain a new major NSR permit issued through the applicable PSD program and meet all the criteria in paragraph “c”.

For emission units in nonattainment areas – Obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all of the criteria in paragraph “c”.

The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

a. Permitting requirement. The emissions unit must have received a major NSR permit within the past ten years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

b. Qualifying air pollution control technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which

includes pollution prevention as defined under subrule 567-33.2(455B) or work practices) that meets both the following requirements in subparagraphs (1) and (2).

(1) The control technology achieves the BACT/LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT/LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(2) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

c. Re-qualifying for the Clean Unit designation. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT/LAER, and the emissions unit must meet the requirements in paragraphs “a” and “b”.

33.6(4) Effective date of the Clean Unit designation. The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined according to the applicable paragraph “a” or “b”.

a. Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing a new control technology to meet current-day BACT/LAER. The effective date is the date the emissions unit's air pollution control technology is placed into service, or three years

after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the Clean Unit applicability test are approved by the Administrator for incorporation into the SIP and become effective for the state.

b. Emissions Units that re-qualify for the Clean Unit designation using an existing control technology. The effective date is the date the new, major NSR permit is issued.

33.6(5) Clean Unit expiration. An emissions unit's Clean Unit designation expires (that is, the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable paragraph “a” or “b”.

a. Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT/LAER.

(1) For any emission unit that automatically qualifies as a Clean Unit under paragraphs 33.6(3)”a” and “b”, or re-qualifies by implementing new control technology to meet current-day BACT/LAER under paragraph 33.6(3)”c”, the Clean Unit designation expires ten years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subrule 33.6(7).

(2) Emissions units that re-qualify for the Clean Unit designation using an existing control technology. For any emissions unit that re-qualifies as a Clean Unit under paragraph 33.6(3)”c” using an existing control technology, the Clean Unit designation expires ten years

after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subrule 33.6(7).

33.6(6) Required Title V permit content for a Clean Unit. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable Title V permit program under rules 567-22.100(455B) through 22.116(455B), but no later than when the Title V permit is renewed, the title V permit for the major stationary source must include the following terms and conditions related to the Clean Unit in paragraphs “a” through “f”.

a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this Clean Unit designation applies.

b. The effective date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded in the Title V permit (*e.g.,* because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (*e.g.,* the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the reviewing authority of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

c. The expiration date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded into the Title V permit (*e.g.,* because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.,* the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the reviewing authority of

the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

d. All emission limitations and work practice requirements adopted in conjunction with BACT/LEAR, and any physical or operational characteristics that formed the basis for the BACT/LEAR determination (*e.g.,* possibly the emissions unit's capacity or throughput).

e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation. (See subrule 33.6(7).)

f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subrule 33.6(7).

33.6(7) Maintaining the Clean Unit designation. To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs “a” through “c”. This subrule applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the BACT/LAER that is recorded in the major NSR permit, and subsequently reflected in the Title V permit.

(1) The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is

inconsistent with the physical or operational characteristics that formed the basis for the BACT/LAER determination (*e.g.,* possibly the emissions unit's capacity or throughput).

(2) The Clean Unit may not emit above a level that has been offset (nonattainment area projects only).

b. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

33.6(8) Offsets and netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), or be used for generating offsets in nonattainment areas, unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

33.6(9) Effect of redesignation on the Clean Unit designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

567—33.7(455B) Clean Unit provisions for emission units that achieve an emission limitation comparable to BACT/LAER. The plan shall provide an owner or operator of a major stationary source the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions in this rule.

33.7(1) Applicability. The provisions of this rule apply to emissions units which do not qualify as Clean Units under rule 567-33.6(455B), but which are achieving a level of emissions control comparable to BACT/LAER, as determined by the department in accordance with this rule. Except as specified, the requirements in rule 33.7 for the Clean Unit Test are applicable to both the PSD and nonattainment area programs. For purposes of rule 33.7, the term "BACT/LAER" shall mean "BACT or LAER" for purposes of PSD permitting and standards, and shall mean "LAER" for purposes of nonattainment area permitting and standards.

33.7(2) General provisions for Clean Units.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subrule 33.7(5))

and before the expiration date (as determined in accordance with subrule 33.7(6)) will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subrule 33.7(4), to be comparable to BACT/LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER (as specified in paragraph 33.7(8)”d”), the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subrule 33.7(4), to be comparable to BACT/LEAR, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER (as specified in paragraph 33.7(8)”d”), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to paragraph 33.7(3)“d”). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements, as if the emissions unit is not a Clean Unit, as follows:

Paragraphs 33.3(2)”c” through “f” and 33.3(2)”h” for PSD projects; or

Paragraphs 33.4(2)”a” through “d” and 33.4(2)”f” and for nonattainment area projects.

33.7(3) Qualifying or re-qualifying to use the Clean Unit applicability test. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in paragraphs “a” through “c”. After the original Clean Unit designation expires in accordance with subrule 33.7(6) or is lost pursuant to paragraph 33.7(2)”c”, such emissions unit may re-qualify as a Clean Unit under either paragraph “d”, or under the Clean Unit provisions in rule 567-33.6(455B). To re-qualify as a Clean Unit under paragraph “d”, the emissions unit must obtain a new permit issued pursuant to the requirements in subrules 33.7(7) and 33.7(8) and meet all the criteria in paragraph “d”. The department will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

a. Qualifying air pollution control technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under rule 567-33.2(455B) or work practices) that meets both the following requirements.

(1) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT/LAER according to the requirements of subrule 33.7(4). However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (*e.g.,* if the BACT/LAER determinations to which it is compared have resulted in a determination that no control measures are required).

(2) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a

pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

b. Impact of emissions from the unit. The department shall determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

c. Date of installation. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of SIP requirements to implement the requirements of this rule. However, for such emissions units, the owner or operator must apply for the Clean Unit designation within two years after the SIP requirements become effective. For technologies installed after the SIP requirements become effective, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

d. Re-qualifying as a Clean Unit. The emissions unit must obtain a new permit (pursuant to requirements in subrules 33.7(7) and 33.7(8)) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT/LAER, and the emissions unit must meet the requirements in subparagraph 33.7(3)”a”(1) and paragraph 33.7(3)”b”.

33.7(4) Demonstrating control effectiveness comparable to BACT/LAER. The owner or operator may demonstrate that the emissions unit's control technology is comparable to

BACT/LAER for purposes of paragraph 33.7(3)"a" according to either paragraph "a" or "b" of this subrule. Paragraph "c" specifies the time for making this comparison.

a. Comparison to previous BACT and LAER determinations. The Administrator maintains an on-line data base of previous determinations of RACT (as defined in 40 CFR 51.100, as amended through April 9, 1998), BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT/LAER if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT/LAER determination has been made within the preceding five years and entered into the RBLC, and, for PSD-subject emission units only, is technically feasible to apply the BACT/LAER control technology to the emissions unit. The department shall also compare this presumption to any additional BACT/LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT/LAER is correct.

b. The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT/LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT/LAER during the public participation process required under subrule 33.7(7). The department shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT/LAER.

c. Time of comparison.

(1) Emissions units with control technologies that are installed before the effective date of SIP requirements implementing rule 567-33.7(455B). The owner or operator of an emissions unit whose control technology is installed before the effective date of SIP requirements implementing rule 567-33.7(455B), at their option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT/LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT/LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in subrule 33.7(6).

(2) Emissions units with control technologies that are installed after the effective date of SIP requirements implementing rule 567-33.7(455B). The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT/LAER requirements.

33.7(5) Effective date of the Clean Unit designation. The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subrule 33.7(7) is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

33.7(6) Clean Unit expiration. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT/LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires ten years from the date that the control technology was installed. For all

other emissions units, the Clean Unit designation expires ten years from the effective date of the Clean Unit designation, as determined according to subrule 33.7(5). In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subrule 33.7(9).

33.7(7) Procedures for designating emissions units as Clean Units. The department shall designate an emissions unit a Clean Unit only by issuing a permit through a permitting program that has been approved by the Administrator, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in subrule 33.7(8).

33.7(8) Required permit content. The permit required by subrule 33.7(7) shall include the terms and conditions set forth in paragraphs “a” through “f”. Such terms and conditions shall be incorporated into the major stationary source's Title V permit in accordance with the provisions of the applicable title V permit program under rules 567-22.100(455B) through 22.116(455B), but no later than when the Title V permit is renewed.

a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which the Clean Unit designation applies.

b. The effective date of the Clean Unit designation. If this date is not known when the department issues the permit (*e.g.,* because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (*e.g.,* the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision,

reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

c. The expiration date of the Clean Unit designation. If this date is not known when the department issues the permit (*e.g.,* because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.,* the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

d. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT/LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER (*e.g.,* possibly the emissions unit's capacity or throughput).

e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (See subrule 37.7(9).)

f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subrule33.7(9).

33.7(9) Maintaining the Clean Unit designation. To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs “a” through “e”. This subrule applies independently to each pollutant for which the department has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT/LAER.

b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT/LAER (*e.g.*, possibly the emissions unit's capacity or throughput).

c. The Clean Unit may not emit above a level that has been offset in a nonattainment area.

d. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

e. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

33.7(10) Offsets and netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), or be used for generating offsets in nonattainment areas, unless such use occurs before the effective date of SIP requirements adopted to implement rule 567-33.7(455B) or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

33.7(11) Effect of redesignation on the Clean Unit designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment designation of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to paragraphs 33.6(2)"c" and 33.7(2)"c", it must re-qualify under the requirements that are currently applicable.

567—33.8(455B) Pollution control project (PCP) exclusion procedural requirements. This rule provides a major stationary source that undertakes a pollution control project (PCP) at an existing emission unit to be excluded from the definitions of a major modification, provided the

conditions in this rule are met. Except as otherwise specified, the PCP exclusion procedures are the same for PSD and nonattainment area requirements.

33.8(1) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department if the project is listed under the definition of "Pollution Control Project (PCP), in rule 567-33.2(455B), or if the project is not listed in rule 567-33.2(455B), then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department consistent with the requirements in subrule 33.8(5). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subrule 33.8(2), and the notice or permit application must contain the information required in subrule 33.8(3).

33.8(2) Any project that relies on the PCP exclusion must meet the requirements in paragraphs "a" and "b"

a. Environmentally beneficial analysis. The environmental benefit from the emission reductions of pollutants regulated under the Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Act. A statement that a technology listed under the definition of "Pollution Control Project" in rule 567-33.2(455B) is being used shall be presumed to satisfy this requirement.

b. Air quality analysis. The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

33.8(3) Content of notice or permit application. In the notice or permit application sent to the department, the owner or operator must include, at a minimum, the information listed in paragraphs “a” through “e”.

a. A description of the project.

b. (1) The potential emissions increases and decreases of any pollutant regulated under the Act;

(2) The projected emissions increases and decreases that will result from the project, using the methodology in subrule 33.3(2) (for PSD-subject projects) or subrule 33.4(2) (for projects in nonattainment areas); and

(3) A copy of the environmentally beneficial analysis required by paragraph 33.8(2)”a”.

c. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in rules 567-22.100 through 567-22.116(455B).

d. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs 33.8(2)”a” and “b”, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

e. Demonstration that the PCP will not have an adverse air quality impact (*e.g.,* modeling, screening level modeling results, or a statement that the collateral emissions increase is included

within the parameters used in the most recent modeling exercise) as required by paragraph 33.8(2)"b". An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

33.8(4) Notice process for listed projects. For projects listed under the "Pollution Control Project" definition in rule 567-33.2(455B), the owner or operator may begin actual construction of the project immediately after notice is sent to the department. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

33.8(5) Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed under the definition of "Pollution Control Project" in rule 567-33.2(455B), the project must be approved by the department and recorded in a plan-approved permit or Title V permit. The department shall provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the Administrator to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the permit.

33.8(6) Operational requirements. Upon installation of the PCP, the owner or operator must comply with the requirements of paragraphs "a" through "d".

a. General duty. The owner or operator must operate the PCP consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs 33.8(2) "a" and "b", with information submitted in the notice or permit application required by subrule 33.8(3), and in

such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

b. Recordkeeping. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in paragraph "a".

c. Permit requirements. The owner or operator must comply with any provisions in the SIP-approved permit or Title V permit related to use and approval of the PCP exclusion.

d. Generation of Emission Reduction Credits. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets in nonattainment areas, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (*e.g.,* taking an operational restriction on the hours of operation.) The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. Except as otherwise specified, the PAL requirements apply to both PSD programs and standards and to nonattainment area programs and standards. For purposes of rule 33.9, the term "BACT/LAER" shall mean "BACT or LAER" for purposes

of PSD permitting and standards, and shall mean "LAER" for purposes of nonattainment area permitting and standards. The term "PAL" shall mean "actuals PAL" throughout this rule.

33.9(1) Definitions. For purposes of rule 567-33.9(455B), the terms in paragraphs "a" through "k" shall have the meaning given in this subrule. When a term is not defined in this subrule, it shall have the meaning given in rule 567-33.2(455B) or in the Act.

a. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in rule 567-33.2(455B)) of all emission units (as defined in rule 567-33.2(455B)) at the source that emit or have the potential to emit the PAL pollutant.

b. "Allowable emissions" means allowable emissions as defined in rule 567-33.2(455B), except as this definition is modified according to subparagraphs (1) and (2).

(1) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(2) An emissions unit's potential to emit shall be determined using the definition in rule 567-33.2(455B), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subrule 33.3(1) (for PSD-subject sources), subrule 33.4(1) (for sources in a nonattainment area), or in the Act, whichever is lower.

d. "Major emissions unit" means:

(1) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(2) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

e. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide, in accordance with this rule.

f. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

g. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

h. "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase in subrule 33.3(1) (for PSD-subject sources) and subrule 33.4(1) (for sources in a nonattainment area), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

i. “PAL permit” means the major NSR permit, the minor NSR permit, the state voluntary operating permit, any other operating permit under a program approved into the SIP, or the Title V permit issued by the department that establishes a PAL for a major stationary source.

j. “PAL pollutant” means the pollutant for which a PAL is established at a major stationary source.

k. “Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level in subrule 33.3(1) (for PSD-subject sources), subrule 33.4(1) (for sources in a nonattainment area), or in the Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph “d”.

33.9(2) Applicability.

a. The department may approve the use of a PAL for any existing major stationary source if the PAL meets the requirements in this rule.

b. The department shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

c. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in this rule, and complies with the PAL permit:

(1) Is not a major modification for the PAL pollutant;

(2) Does not have to be approved through the SIP's major NSR program for PSD or nonattainment areas; and

(3) Is not subject to the provisions in paragraph 33.3(18)”b” or paragraph 33.4(4)”b” (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

d. Except as provided under subparagraph 33.9(2)”c”(3), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

33.9(3) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

a. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

b. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph 33.9(13)”a”.

33.9(4) General requirements for establishing PALs.

a. The department may allow a PAL at a major stationary source, provided that at a minimum, the requirements in subparagraphs (1) through (7) are met.

(1) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in subrule 33.9(5).

(3) The PAL permit shall contain all the requirements of subrule 33.9(7).

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one pollutant.

(6) Each PAL shall have a PAL effective period of ten years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subrules 33.9(12) through 33.9(14) for each emissions unit under the PAL through the PAL effective period.

b. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under subrule 33.4(3) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

33.9(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR §51.160 (as amended through August 12, 1996) and 51.161 (as amended through November 7, 1986). The department shall provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

33.9(6) Setting the ten-year PAL level.

a. Except as provided in paragraph "b", the PAL level for a major stationary source shall be established as the sum of the baseline actual emissions, as defined in subrule 33.2(1), of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subrule 33.3(1) (for PSD-subject sources), under subrule 33.4(1) (for sources in a nonattainment area), or under the Act, whichever is lower. When establishing the PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant.

Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) for which the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

b. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph "a", the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

33.9(7) Contents of the PAL permit. The PAL permit shall contain, at a minimum, the information in paragraphs "a" through "j".

a. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

b. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subrule 33.9(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

d. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subrule 33.9(9).

f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph 33.9(3)”a”.

g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subrule 33.9(12).

h. A requirement to retain the records required under subrule 33.9(13) on site. Such records may be retained in an electronic format.

i. A requirement to submit the reports required under subrule 33.9(14) by the required deadlines.

j. Any other requirements that the department deems necessary to implement and enforce the PAL.

33.9(8) PAL effective period and reopening of the PAL permit.

a. PAL effective period. The department shall specify a PAL effective period of ten years.

b. Reopening of the PAL permit.

(1) During the PAL effective period, the department shall reopen the PAL permit to:

Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under subrule 33.4(3); and

Revise the PAL to reflect an increase in the PAL as provided under subrule 33.9(11).

(2) The department may reopen the PAL permit for the following:

Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source; and

Reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(3) Except for the permit reopening for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of subrule 33.9(5).

33.9(9) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in 33.9(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs “a” through “e” shall apply.

a. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subparagraphs (1) and (2).

(1) Within the time frame specified for PAL renewals in paragraph 33.9(10)"b", the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph 33.9(10)"e", such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

b. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

c. Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subparagraph "a"(2), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements for PSD or nonattainment areas if such change meets the definition of major modification in subrule 33.3(1) or subrule 33.4(1).

e. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT/LAER, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph 33.3(18)"b" (for PSD-subject sources) or paragraph 33.4(4)"b" (for sources in a nonattainment area), but were eliminated by the PAL in accordance with the provisions in subparagraph 33.9(2)"c"(3).

33.9(10) Renewal of a PAL.

a. The department shall follow the procedures specified in subrule 33.9(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

b. Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

c. Application requirements. The application to renew a PAL permit shall contain the information required in subparagraphs (1) through (4).

(1) The information required in paragraphs 33.9(3)”a” through “c”.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

d. PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in subparagraphs (1) and (2). However, in no case may any such adjustment fail to comply with subparagraph (3).

(1) If the emissions level calculated in accordance with subrule 33.9(6) is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subparagraph (2); or

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the reviewing authority in its written rationale.

(3) Notwithstanding subparagraphs (1) and (2):

If the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

The department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subrule 33.9(11) (increasing a PAL).

e. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

33.9(11) Increasing a PAL during the PAL effective period.

a. The department may increase a PAL emission limitation only if the major stationary source complies with the provisions in subparagraphs (1) through (4).

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT

equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subparagraph "a"(1), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT/LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b. The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subparagraph "a"(2)), plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subrule 33.9(5).

33.9(12) Monitoring requirements for PALs

a. General requirements.

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subparagraphs “b” (1) through (4), and must be approved by the department.

(3) Notwithstanding subparagraph (2), the owner/operator may also employ an alternative monitoring approach that meets subparagraph (1), if approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

b. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs “c” through “i”:

(1) Mass balance calculations for activities using coatings or solvents;

(2) CEMS;

(3) CPMS or PEMS; and

(4) Emission factors.

c. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B (as amended through January 12, 2004); and

(2) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(2) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

f. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h. Notwithstanding the requirements in paragraphs “c” through “g”, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

i. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

33.9(13) Recordkeeping requirements.

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement in this rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus five years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL; and

(2) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

33.9(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable Title V operating permit program. The reports shall meet the requirements in paragraphs “a” through “c”.

a. Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the information required in subparagraphs (1) through (7).

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph 33.9(13)”a”.

(3) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph 33.9(12)"g" of this section.

(7) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

b. Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to subrule 22.108(5) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing subrule 22.108(5). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number;

(2) The PAL requirement that experienced the deviation or that was exceeded;

(3) Emissions resulting from the deviation or the exceedance; and

(4) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

c. Re-validation results. The owner or operator shall submit to the department the results of any re-validation test or method within three months after completion of such test or method.

33.9(15) Transition requirements.

a. The department may not issue a PAL that does not comply with the requirements in this rule after the Administrator has approved regulations incorporating these requirements into Iowa's SIP.

b. The department may supersede any PAL which was established prior to the date of approval of the Iowa SIP by the Administrator with a PAL that complies with the requirements of this rule.

These rules are intended to implement 455B of the Iowa Code.

_____
Date

_____
Jeffrey R. Vonk, Director

Administrative Rule Fiscal Impact Statement

Date: November 30, 2004

Agency: Department of Natural Resources
IAC Citation: 20.1, 22.4, 22.5, 22.6, 31.1, 33(455B)
Agency Contact: Anne Preziosi

Summary of the Rule: The U.S. Environmental Protection Agency (EPA) promulgated revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR Part 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR Part 51.166. The rule adoptions and revisions are required to reflect the changes in federal regulations.

Fill in this box if the impact meets these criteria:

_x_ No Fiscal Impact to the State.
___ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.
___ Fiscal Impact cannot be determined.

Brief Explanation:
The DNR is currently implementing the PSD and nonattainment NSR permit programs. The rule revisions and adoptions will not create any additional fiscal impact to the program.

Fill in the form below if the impact does not fit the criteria above:

___ Fiscal Impact of $100,000 annually or $500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE		
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL EXPENDITURES		
NET IMPACT		

x This rule is required by State law or Federal mandate.
Please identify the state or federal law:
The PSD and NSR Programs are mandated in part C and D of Title I of the U.S. Clean Air Act. Federal regulations are found in 40 CFR 51.165, 40 CFR 51.166.

Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:
Owners and/or operators of major sources of air pollution who construct a new emission source or make a modification at an existing facility that triggers the requirement for a PSD review will be affected by this rulemaking. Currently there are approximately 300 major sources in Iowa that are already impacted by potential PSD review. The proposed changes should be beneficial to industry as the federal rule allows for more flexibility in PSD review and reduces the regulatory burden.

Currently the department does not charge a fee to process a PSD permit application. The time needed for the applicant to complete a permit application and associated ambient air modeling is significant. Due to the different needs of each application, it is difficult to estimate the fiscal impact to affected sources.

The changes to the PSD and nonattainment NSR programs will have little, if any, impact to the general public or environmental quality.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):
None.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Wendy Rains
Telephone Number: 281-6061

NSR Reform Workgroup Recommendation Summary

Background

On March 30, 2004, The Iowa Department of Natural Resources (department) convened a technical workgroup to provide recommendations to the department regarding state adoption of the U.S. Environmental Protection Agency's (EPA) major New Source Review (NSR) reform rules. These rules were promulgated by EPA on December 31, 2002, in Volume 67, Number 251, page 80186 of the Federal Register. The workgroup consisted of affected stakeholders who have experience and knowledge of the major NSR program. The workgroup was facilitated by the Iowa Department of Economic Development and was supported by permitting staff from the department. Workgroup participants are listed in Table 1.

Members of the technical workgroup were split into smaller workgroups to review and provide recommendations regarding baseline actual emissions, plantwide applicability limitations, and pollution control projects/clean units. The workgroups met and corresponded on these issues as necessary beginning on May 3, 2004 through early November 2004. Each workgroup formally presented their draft recommendations to the department and the other workgroup members for review and comment at a joint workgroup meeting on October 27, 2004. Final recommendations were received from each workgroup by November 15, 2004. The final recommendations are summarized below by workgroup with the department's response to each recommendation. In the few cases where the department does not recommend incorporation of the workgroup's recommendations into the rule, the department remains open to further discussion of these issues through the formal rulemaking process.

A. Recommendations Regarding Baseline Actual Emissions (BAE)

It was the recommendation of the BAE workgroup that the department adopt, as Iowa rules, the new EPA rules on major NSR with minor clarifications as out lined below. The workgroup did not believe that it would be in the best interest of the department or the regulated community in Iowa to rewrite the rules or adopt them by reference.

This workgroup reviewed the BAE issues that were assigned to it by the department. The workgroup initially defined 43 sub issues that were further researched. At a workgroup meeting on June 7, 2004, the 43 sub issues were reviewed and discussed. Based on this review, the workgroup eliminated several issues and combined the rest into 8 issues. Prior to the July 9, 2004 meeting, a 9th issue was added by two members of the workgroup. This issue ended up being acted on by the workgroup as two items.

Final actions on each of these nine issues were taken by the workgroup at a meeting on July 9, 2004. A synopsis of the workgroup's recommendations on each of the nine issues and the department's analysis and action regarding each of the nine recommendations follows, by issue number.

Issue 1: The definition of "to the extent quantifiable" (567 Iowa Administrative Code (IAC) 33.2(1) and 33.2(2)) as related to fugitive emissions.

Workgroup recommendation: No report or action taken. The workgroup recommended that no changes be made to the EPA regulations on this topic.

Department Analysis and Action: The department concurs.

Issue 2: The definition of adequate/inadequate information (567 IAC 33.2(1)) for determining annual emissions.

Workgroup recommendation: The workgroup recommended that no changes be made to the EPA regulations on this topic. While this will leave uncertainty regarding this definition, it will also provide flexibility to address issues related to the definition on a case-by-case basis.

Department Analysis and Action: The department concurs.

Issue 3: Startup, Shutdown and Malfunction (567 IAC 33.2(1) and 33.2(2)) as related to baseline actual and projected actual emissions.

Workgroup recommendation: The workgroup recommended that the department address this topic in the rulemaking. They recommended that wording in the rulemaking should indicate "unless there is evidence to the contrary, startup, shutdown, and malfunction emissions before and after a project shall be assumed to be equal." This approach should be limited to cases where emissions data under these conditions are not available. Additionally, the department should include in its adoption that all emissions "allowed" under a standard, not just the emissions limitation, are allowed to be included in the baseline actual emissions.

Department Analysis and Action: The department has identified several examples of when startup/shutdown/malfunction (SSM) are not the same before and after construction. They include the following:

- New technology- A company puts in a technology it hasn't used before to replace its existing technology. It cannot be expected that a facility will have the same number of SSMs or even the same emission rates if the technologies are not the same.
- More hours of operation- Example: The existing unit operates only 4,000 hours/yr. It is to be replaced by a newer unit that the facility intends on operating 8,760. Since the unit will operate twice as many hours it cannot be expected that the number of SSMs will be the same nor the amount of emissions will be the same.
- New equipment- Since the new equipment has no operating history the SSM emissions may be more than the previous emissions.
- Debottlenecked equipment- Equipment that has been debottlenecked (or equipment that sees an increase in utilization) could see an increase in SSM (both numbers and amount of emissions) as it will be operated more.
- Modified equipment- It cannot be assumed that the number of SSMs will be the same and even if the SSMs are the same the amount of emissions may not be.

It is clear that their could be many instances where the SSMs may not be equal before or after a project for either baseline actual emissions or projected actual emissions. Based on this, the department believes that the workgroup recommendation could be viewed as less stringent than

the EPA's regulations. Therefore, the department will not include this recommendation in its rulemaking.

Issue 4: The issue of including or excluding partial month records based on the day the emissions unit resumes regular operation.

Workgroup recommendation: If the compliance date occurs on any day other than the first day of the month, then the initial compliance period should begin on the first day of the following month. The workgroup recommended that the department include the following language in its rulemaking: "The 12 month period for calculating post change actual emissions begins on the first day of the month following the date when the emissions unit resumes regular operation."

Department analysis and action: The department will include this recommendation in 567 IAC 33.2(2)"a" as follows: "33.2(2) a. "Projected actual emissions" for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) beginning on the first day of the month following the date when the unit commences or resumes operation after the project, …" The underlined text replaces "following the date the unit resumes regular…" This change removes the word "regular," which is undefined, and clarifies that the requirement could also apply to a new unit by adding the word "commences."

Issue 5: Consideration of defining the concepts of "Debottlenecking," "Increased Utilization, and "Related to the Project" for Actual to Projected Actual tests.

Workgroup recommendation: After much consideration of these concepts and their use, the workgroup recommended that the following definition of debottlenecking be included in Iowa's adoption of the major NSR rules: "Debottlenecking is emission increases attributable to physical modifications that increase the capacity of up-stream or down-stream processing equipment occurring within the prior twelve months of the permit project being considered. Debottlenecking is not an increase in hours of operation or in the production rate of unmodified processing equipment consistent with permit conditions for that equipment."

Department analysis and action: There are two parts to the recommended language:

- to limit consideration to those units in which the change took place within the past twelve months, and
- to limit consideration to only those emission units undergoing a physical change.

EPA guidance was reviewed for previous debottlenecking decisions. This review identified between 22 documents in the EPA Regions 7 Policy and Guidance Database and 90 documents across EPA's entire web site. The first 10 documents of the 22 identified in the Region 7 database were reviewed. It became evident during review of just these documents that EPA has a significantly different view of the applicability of utilization changes at unmodified equipment than that presented by the workgroup. EPA's interpretation is that once one unit is modified in such a way to satisfy the definition then all emission increases that result from that modification must be included in the determination, whether or not that project is significant. This includes even emission increases from units that are not physically modified if the modified unit enables

the non-modified unit to be used more intensely. From this review it is clear that a recommendation, to limit review to only those sources that have been physically modified and to further limit it to a specific time interval of the change, would be a significant change in policy.

The term debottlenecking is used to describe the decision whether or not to count future production capabilities in related (but unmodified) equipment. To that end the first sentence of the recommendation ("Debottlenecking is emission increases attributable to physical modifications that increase the capacity of up-stream or down-stream processing equipment occurring within the **prior twelve months of the permit project being considered**."(emphasis added)) is not an accurate definition.

The workgroup noted that they wanted criteria (twelve months) for when previous permitting is not brought into the current review. This is an aggregation issue rather than a debottlenecking issue. Addressed as an aggregation issue, it is valid to limit that review to prior modifications and to exclude activities that are solely changes in utilization. However, current interpretation of the "major modification" definition would require that each minor modification subject to review for possible aggregation into a major modification be defined to include emission increases to associated (but unmodified) units that the physical modification enables.

EPA guidance on the issue of aggregation is connected to attempts to distinguish between issues of circumvention versus the risk of forcing PSD review by merely accumulating independent actions. Frequently EPA has tried to identify criteria to distinguish related from unrelated projects though such means as filing permit applications within a short time of each other. However, these efforts have often tried to discern corporate intent through such means as applications for funding, and reports to stockholders, Securities and Exchange Commission (SEC), and other regulatory boards indicating projected production levels or consumer demand. Alternately EPA has suggested that the regulatory agency presume that two applications are related until the applicant submits convincing documentation that they are not related. This is what has led the department to the use of the physical relationship of the projects that have the effect of looking much like a phased project.

Limiting either backward looking aggregation reviews or forward looking debottlenecking reviews to only those emission units that have been physically modified would be a direct departure from longstanding EPA interpretations of the rule definition of major modification. The relevant portions of that definition remain unchanged, indicating that EPA still considers past interpretations valid. EPA's major NSR rules now formalize the inclusion of those emissions associated with the project from unmodified units by requiring their inclusion in the future emissions estimates while excluding them from the past emissions estimates. Implementation of the workgroup recommendation would directly conflict with EPA's rules.

Finally, the department is concerned that the recommendation would overlook emission increases that should be subject to PSD review. In contrast to minor source permitting, the PSD program is designed to *minimize* emissions and air quality degradation by requiring the installation of new control technologies. The department could not justify this relaxation unless it was to strengthen the non-PSD portions of it NSR program to compensate. It would be a very

resources intensive effort to modify the non-PSD portions of the NSR program adequately to provide justification for such a relaxation in the PSD program.

Based on this review, the department has selected not to adopt the workgroup's recommendation regarding debottlenecking.

Issue 6: Contemporaneous period for netting.

Workgroup recommendation: The workgroup recommended no changes. The workgroup believes that at this point in the process it is premature to propose language allowing a different contemporaneous period.

Department analysis and action: The department concurs. EPA allows states with SIP approved NSR programs to retain flexibility in defining the length of the contemporaneous period (567 IAC 33.3, definition of "net emissions increase"). The department will continue to follow the current practice of using a five year contemporaneous period.

Issue 7: Availability of records to the general public.

The major NSR rules require the facility to make certain records documenting the applicability test used to determine whether a modification is significant available to the public. The workgroup recommends that the rules state that those records request come to the Department and not directly to the facility.

Workgroup recommendation: The workgroup recommended that the following language be added in the adoption of the major NSR rules at 567 IAC 33.3(18)"g": "The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (insert appropriate reference) of this section available for review upon a request for inspection by the Administrator. This same information shall be made available to the general public by the administrator upon request."

Department analysis and action: Three factors influenced the department's recommendation to resist this suggestion. First, the rule establishes a right for the public to directly gain access to these records. The department believes that having to go through the department adds an unnecessary step in the public gaining this access. This recommendation would create additional administrative burdens for the department. The department would become a manager of information requests between the public and the facilities for records that the facility is not required to submit to the department. Additionally, all records and information received by the department during the course of the information request would also have to be stored by the department for the public record.

Second, the workgroup recommendation could allow owners or operators to shield facility records from public access through a confidentiality request. Since the recommended language would only allow the public access to the records through the department, a confidentiality request, if approved, would put the department in the position of denying the public's request for

access to the records and leave the public no alternative to obtain the records. This clearly was not EPA's intent.

Finally, by taking on the role of collecting and distributing this material, the public may make the incorrect assumption that this material has been reviewed and approved by the department. In the normal course of periodically reviewing a facility's permitting history the department will review this material; but will not at the time of obtaining it for the public, make such a review.

Based on these considerations, the department has selected to not adopt this workgroup recommendation.

Issue 8: Definition of a legally enforceable emission factor.

Workgroup recommendation: Since the language that was of concern on this issue only appears in the preamble to EPA's rules, the workgroup recommends that the department continue to use best available emissions data and that no changes be made to the EPA rules on this topic.

Department analysis and action: The department concurs.

Issue 9a: Consequences to a source that exceeds its projected actual emissions.

EPA's major NSR rules require that a non electric generating unit facility that exceeds the projected actual emissions by a significant amount report the exceedance in writing within 60 days of the end of the year in which the exceedance occurs. Beyond this requirement the regulations are silent with respect to exceeding the projected actual emissions; i.e., there is no discussion of potential consequences, follow-up action required by the facility, additional monitoring, recordkeeping or reporting.

Workgroup recommendation: Several proposals to address this concern were provided in the workgroup's proposal. However, the workgroup believes that the options out lined in the proposal are available to industry and the department today. Therefore, the department does not need to enumerate them in regulatory language. The workgroup recommends no further action on this item.

Department analysis and action: The department concurs. Exceedances of projected actual emissions will be addressed by the department through its established compliance and enforcement mechanisms. The requirement to adopt provisions to address this issue beyond the 60 day reporting requirement would make the state's rules more stringent than the EPA's.

Issue 9b: What should be the remedy for a source that realizes that it will exceed its projected actual emissions by the PSD significance amount for a project that netted out of PSD?

Workgroup recommendation: The workgroup requested that the department take whatever steps are necessary to determine what will/should happen to correct the situation when a source exceeds its projected future actual emissions unexpectedly or knows they will exceed their projected future actual emissions several years after the project is complete and in operation.

Department analysis and action: The workgroup's proposal suggested several steps that the department could take to remedy exceedances of projected actual emissions or anticipated exceedances of the projected actual emissions. The proposal further suggested that action beyond the 60 day reporting period requirement should be optional and used only at the discretion of the facility. If implemented, this proposal would diminish the department's enforcement authority and restrict the department's current authority to issue administrative orders.

The department will address exceedances of the projected actual emissions on a case-by-case basis using established compliance and enforcement mechanisms. Based on these considerations, no further action is required regarding this recommendation.

B. Recommendations Regarding Plantwide Applicability Limitations (PALs)

The PALs workgroup considered three options for adopting the PALs portion of EPA's major NSR rules: adopt by reference, write EPA's rules into the Iowa Administrative Code, or write separate rules for Iowa based on EPA's rules.

An initial evaluation of the PALs portion of the December 31, 2004 Federal Register notice promulgating the changes to the major NSR rules led to the temporary conclusion that nine of the 25 rule sections could be improved with some rewriting of the rules. Further evaluation of the nine specific rules indicated that it would be very difficult and time consuming to rewrite these rules and meet the EPA requirement of being no less stringent than the federal rules and the state requirement of being no more stringent than the federal rules.

The workgroup did identify the need to develop guidance documents in the future to help facilities apply for a PAL permit, model for a PAL permit, and exit a PAL permit. However, the workgroup believes that it would not be possible to develop these guidance documents until at least one or two facilities have worked through the PAL permitting process.

Based on these considerations, the workgroup recommended that the state adopt the PALs rules by writing the rules into the Iowa Administrative Code with no changes.

C. Recommendations Regarding Pollution Control Projects (PCP)/Clean Units

The PCP/Clean Units workgroup considered eight questions posed by the department regarding PCPs and three questions regarding Clean Units. After evaluation of the portions of EPA's rules that pertained to the questions, the workgroup reached a consensus that the state should use/reference the EPA's rule language.

Regarding the issue of adding new pollution control project technologies to EPA's list of presumptive environmentally beneficial technologies (567 IAC 33.2), the workgroup recommended that the department create and maintain an Iowa PCP Clearinghouse that could be accessed on-line. The clearinghouse would be updated with relevant information by the department as the department performs case-specific analyses of PCP exclusion requests and

determines that a non-listed technology is environmentally beneficial. The clearinghouse could also include PCP exclusion requests that were denied by the department. The recommendation to create a state PCP clearinghouse does not impact the major NSR rule adoption.

The workgroup's final recommendation was to adopt the PCP/Clean Unit provisions of EPA's major NSR rule revisions as written into the Iowa Administrative Code.

Table 1. Workgroup Participants

Company	Name	Workgroup Area
Alliant Energy	Alan Arnold	BAE/PCP
HDR	Larry Carlson	PALs
Grain Processing Corp	Bill Chrisman	BAE
MidAmerican Energy	Kyle Davis	PCP
Stanley Consultants Inc.	Mick Durham	PAL
Cargill	Chuck Hallier	BAE
MidAmerican Energy	Pete Hamlin	BAE
Omega	Tom Hansen	PAL
Bunge North America	Robert Henricks	PCP
Stanley Consultants Inc.	James Hodina	BAE
ALCOA	Wayne Jochmann	BAE
AGP	Kelly Jorgensen	BAE
Iowa DNR	Karen Kuhn	PCP
Larson Engineering	Lisa Larson	PALs
Alliant Energy	Michael Li	PALs
ALCOA	John Mitchell	BAE
El Paso Corp	Stephen Morales	PCP
Sebesta Blomberg & Assoc.	Richard Ney	BAE
Northern Natural Gas	Leo Nichols	BAE
John Deere	Jim Nitzschke	PALs
Shuttleworth & Ingersoll	Steve Pace	PALs
Monsanto	Julie Peshkin	BAE
Howard R Green	Angela Phipps	PCP
Iowa DNR	Chris Roling	PALs
Holcim	Glen Rosenhamer	PALs
Thompson Environmental	Lisa Schmidt	BAE
Iowa DNR	Gary Smith	BAE
ADM	Rich Stephens	PALS
Department of Economic Development	Sherry Timmins	Facilitator
Equistar Chemicals	Jerry Tonneson	PCP
University of Iowa	Mike Valde	BAE
Holcim	Steve Van Ootegham	BAE
Iowa DNR	George Welch	BAE/PALs/PCP
Pella Corp	Joe Winch	PALs